

FILED

MAY - 9 2002

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

CLERK, U.S. DISTRICT COURT
By Deputy

Gerald K. Smith, as Plan Trustee for and on
behalf of the Estates of Boston Chicken,
Inc., et al.,

NO. 3- 02-MC-032-M

Plaintiff,

vs.

Arthur Andersen LLP, a limited liability
partnership, et al.,

Defendants.

**STIPULATION TO WITHDRAW GODWIN GRUBER'S
MOTION TO QUASH AND OBJECTIONS TO THE
TRUSTEE'S SUBPOENA DUCES TECUM**

THE PARTIES TO THIS STIPULATION, PLAINTIFF, GERALD K. SMITH,
PLAN TRUSTEE OF BOSTON CHICKEN, INC. ("TRUSTEE"), GODWIN GRUBER,
P.C. ("GODWIN GRUBER"), AND DEFENDANT SCOTT A. BECK ("BECK") HEREBY
STIPULATE AND AGREE AS FOLLOWS:

1. Beck will produce to the Trustee the following documents in the *Charles D. Howell, Trustee v. Blockbuster Entertainment Corporation, Scott Beck et al.*, Dallas County District Court, State of Texas, Case No. 10193-M (the *Howell* case) in the care, custody or control of Beck's Dallas, Texas counsel, Gardere Wynne & Sewell, L.L.P. ("Gardere Wynne");

a. Depositions, interrogatories and requests for admissions;

b. Trial exhibits;

1 c. Trial transcripts; and

2 d. The settlement agreement signed by all parties.

3 2. Gardere Wynne also will provide a list of other documents in its care, custody
4 or control to determine if additional documents are needed by the Trustee by May 20, 2002.

5 3. Beck will produce to the Trustee the *Howell* documents identified in paragraph
6 1 (a) to (d) above at the offices of Beck's local counsel in Phoenix, Arizona no later than
7 May 17, 2002.

8 4. Based upon Judge Paul G. Rosenblatt's May 2, 2002 Order, Beck agrees that
9 Godwin Gruber can produce its copy of the *Howell* settlement agreement.

10 5. The Trustee agrees to treat the *Howell* settlement agreement produced by Beck
11 and Godwin Gruber as subject to the Order Governing Confidentiality Of Documents
12 Produced By Third Parties entered by the Honorable Paul G. Rosenblatt on February 5,
13 2002. If other documents called for by this Stipulation were subject to a confidentiality order
14 in the *Howell* case, then those confidential documents will be subject to Judge Rosenblatt's
15 February 5, 2002 Order Governing Confidentiality Of Documents Produced By Third
16 Parties.

17 6. Godwin Gruber will review the following boxes it maintains in storage in the
18 *Howell* case for the purpose of removing any confidential, privileged or work product
19 materials: 12, 14-20, 28, 34, 42, 48, 49, 54, 57, 64, 84, 87, 95, 100, 104, 107, 112, 180, 185-
20 190, 193-195 and 198-207. The documents to be produced to the Trustee from these boxes
21 is formal discovery including, depositions, interrogatories and requests for admissions, trial
22 exhibits, trial transcripts and the *Howell* settlement agreement.

1 7. The Trustee will pay a reasonable cost of retrieving the foregoing boxes from
2 storage in Dallas, Texas and delivery to Godwin Gruber.

3 8. The Trustee will pay to Godwin Gruber for the "privileged" review of these
4 boxes a fair and reasonable fee not to exceed \$4,000.

5 9. Godwin Gruber will complete its "privileged" review in order that its
6 nonprivileged documents can be reviewed by the Trustee, for purposes of inspection and
7 copying, at Godwin Gruber beginning no later than May 24, 2002. The Trustee will pay the
8 cost of reproducing the documents it identifies from Godwin Gruber's nonprivileged
9 document production.
10

11 10. The Trustee agrees that if any confidential, privileged or work product
12 materials are discovered during its review of Godwin Gruber's documents, the Trustee will
13 so notify Godwin Gruber, not make any copies thereof and will consider production of such
14 materials to be inadvertent and not an express or implied waiver of any privilege or
15 confidential treatment to which the materials are otherwise entitled.

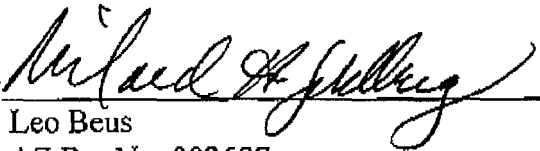
16 11. If Godwin Gruber subsequently determines after its document production to
17 the Trustee that any documents so produced contained confidential or privileged information,
18 then Godwin Gruber will have the right to the return of such documents and their production
19 will not be deemed to be a waiver of any privilege or confidential treatment. On the
20 Trustees' motion, the Court can decide whether the document is confidential or privileged
21

22 12. By this Stipulation, Godwin Gruber agrees to withdraw its Motion To Quash
23 and Objections to the Trustee's *Subpoena Duces Tecum* set for hearing on May 10, 2002 and
24
25

1 the Trustee and Godwin Gruber agree that the Court may enter an Order approving the
2 Stipulation.

3 Respectfully submitted,

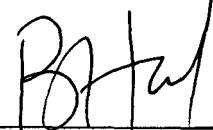
4 **BEUS GILBERT PLLC**

5
6 By 

7 Leo Beus
8 AZ Bar No. 002687
9 Richard H. Goldberg
10 AZ Bar No. 20824
11 1000 Great American Tower
12 3200 North Central Avenue
13 Phoenix, Arizona 85012
14 Telephone: 602-274-8229
15 Facsimile: 602-234-5893

16 **ATTORNEYS FOR PLAINTIFF**

17 **GODWIN GRUBER, P.C.**

18
19 By 

20 G. Michael Gruber
21 State Bar No. 08555400
22 Brian N. Hail
23 State Bar No. 08705500
24 Renaissance Tower
25 1201 Elm Street, Suite 1700
Dallas, Texas 75270
Telephone: 214-939-4400
Facsimile: 214-760-7332

ATTORNEYS FOR GODWIN GRUBER, P.C.

1 GARDERE WYNNE SEWELL, L.L.P.

2
3 By: Cynthia Hollingsworth
4 Cynthia Hollingsworth, Esq.
5 State Bar No. 09879500
6 3000 Thanksgiving Tower
7 1601 Elm St.
8 Dallas, TX 75201-4761
9 Telephone: 214-999-4656
10 Facsimile: 214-000-3656

11
12 ATTORNEYS FOR DEFENDANT
13 SCOTT A. BECK
14
15
16
17
18
19
20
21
22
23
24
25